IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 100 (MB) OF 2002

Sri Chandra Singh,
S/o late Kheem Singh,
R/o Village Talla Bhakuda,
P.O. Sayalde, District-Almora. .....Petitioner.

Versus

1. Chairman Jal Nigam, 6 Rana Pratap Marg, Lucknow.
2. Managing Director U.P. Jal Nigam, 6 Rana Pratap Marg, Lucknow.
3. Finance Director U.P. Jal Nigam, 6 Rana Pratap Marg Lucknow.
4. Chief Engineer Grade I (C E I) Chief Officer, U.P. Jal Nigam Lucknow.
5. Chief Engineer Jal Nigam Kumaon Nainital.
6. Superintendent Engineer Jal Nigam Almora.
7. Executive Engineer II Prakalp Sakha, U.P. jal Nigam Naula Bhikiyasen, District Almora.

.....Respondents.

Dated: 30.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri M.C. Kandpal, Sr. Advocate, assisted by Sri S.S. Chaudhary & Kurban Ali, Advocate for the petitioner, Sri Sudhir Singh, Advocate for the respondents no. 1, 2 and 3 and Sri D.S. Patni, Advocate for the respondents no.5, 6 & 7.

2. By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 21.12.2002 by which the petitioner has been regularized as Field Worker on 01.04.1989 and the pension has been refused to him as he had to retire on 30.06.1997, but due to non-availiabily of relevant G.O. in the office, he has been retired on 30.06.1999.

3. The pension has been refused to the petitioner on the ground that he was to retire on 30th June, 1997.

4. The matter is fully covered by the judgment passed on 21.08.2003 in Writ Petition No. 77 (SB) of 2003 (Pritam Singh Jantwal Vs. Adhishasi Abhiyanta (Nirman Shakha), U.P. Jal Nigam, Nainital and three others), which has been confirmed in Special Appeal No. 30 of 2004 (U.P. Jal Nigam Lucknow and another Vs. Pritam Singh Jantwal) on 5th August, 2006 after relying upon the judgment of ***Kailash Singh Vs. State of Bihar and others 2005 AIR SCW 3273*** where post retiral benefits have been granted as will appear from relevant portion of the aforesaid judgment, the same is quoted below:-

> *The appellant had taken work form the respondent without any dispute. He would obviously be entitled to his salary and we do not find any reason as to why he should be deprived of the post retiral benefits. If he was in service and he had served the department continuously for a period of more than 10 years he would be entitled to get all the post retiral benefits. In Kailash Singh Vs. State of Bihar and others-2005 AIR (SCW) 3273, the appellant was taken in employment in the Electricity Board as Khalasi in the year 1968. The service book of the appellant was prepared only in the year 1993 in which his date of birth was recorded as 13.01.1946. In the year 2000 it was felt that in some cases the original service books were either not available or lost or there was some tampering with the same. The Board constituted a medical board to determine the age of their workmen. The age of the appellant was assessed as 65 years in the year 2000. According to his medical report the date of retirement of the appellant was 31.03.1995. As a result thereof the*

appellant was treated to; have retired on 31.03.1995 and the said order of retirement was conveyed on 24.04.2000. The salary was paid to the appellant till 2000 and the salary for the period beyond the date of superannuation, i.e. 1995 was sought to be recovered from the appellant and his post retiral benefits was also sought to be fixed accordingly. The High Court dismissed the petition. The Hon'ble Apex Court5, while allowing the appeal, held "so far as post retiral benefits are concerned it is submitted that they may not be admissible to him. We fail to appreciate the submissions made on behalf of the respondents in the background of the facts indicated in the earlier paragraph. The respondents took work from the appellant without any dispute. He would obviously be entitled to his salary and there is no reason as to why he should be denied the post retiral benefits. His total service comes to 32 years……..In the totality of facts and the circumstances of this case, we find no good reason to deny those benefits to the appellant.

9. In the case ion hand the respondent was continuously in service for more than 10 years and he retired on 30.09.199. According to the appellant he served the department due to the inadvertence of the appellant's office.

10. Considering the peculiar facts and circumstances of the case, we are of the considered opinion that the respondent is entitled to post retiral benefits. The learned single Judge was justified in holding that the respondent on completing the qualifying service, retired on 30.9.1999, therefore, he was entitled to the pension according to the Rules of the Jal Nigam. The learned single Judge was also justified in

allowing the petition and to issue the mandamus to the appellant to pay the pension of the respondent within the stipulated time."

5. In view of the aforesaid, a writ of certiorari is issued quashing the order dated 21.12.2001 passed by the Adhishasi Abhiyanta II Prakalp Sakha, U.P. Jal Nigam Naula Bhikiyasen District Almora.

6. Further, respondent no. 2 is directed to consider the payment of the pension amount in accordance with the judgment of the Apex Court as well as the judgment of Special Appeal.

7. Writ petition is allowed. All the pending applications are also disposed of. No order as to costs.

(Rajesh Tandon, J.)

30.08.2006
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